



Escalation and Resolution of Concerns

Extract from

Getting it Right for Children, Young People & Families in Aberdeenshire Multi-Agency Operational Guidance

<https://www.girfec-aberdeenshire.org/category/girfec-toolkit-2020/>

Escalation and Resolution of Neglect Concerns

At times, involved professionals will not view the needs/risks for a family in the same light as one another and differing thresholds are not uncommon in multi-agency working. This highlights the importance of ongoing discussion by the Team Around the Child to work through any disagreement, with robust use of chronologies, the National Practice Model and other tools to clearly evidence a child/young person's wellbeing needs through assessment.

Where a professional difference of opinion arises or there is disagreement over a declined Request for Assistance, frontline resolution should always be attempted in the first instance between the involved practitioners. Where this is unsuccessful, or where concerns remain for a child/young person's wellbeing – you should raise these with your Line Manager to support a speedy resolution. Disputes may be escalated to Service Managers and Heads of Service where required.

Legal Measures – Neglect

Where voluntary engagement is not sufficiently addressing a child's needs, or is thought unlikely to be sufficient, referral of the child to the Reporter should be considered.

Criteria for Referral to the Reporter

The statutory criteria for referral are:

- The child is in need of protection, guidance, treatment or control AND
- It might be necessary for a compulsory supervision order to be made in respect of the child.

In concrete terms, a compulsory supervision order is a legal order issued by a children's hearing and requiring the Local Authority to provide supervision and support to the child.

The legal definition of child includes a person under the age of 16 years. It does not include an unborn child although agencies may make plans for intervention at birth where there are concerns and evidence of the unborn child's needs having been neglected in utero.

Both Local Authority and Police must refer a child to the Reporter where the statutory criteria apply. Any other person may refer.

GIRFEC/ Multi agency forums should consider referral. Information held by different agencies, when taken together, can help in identifying the child's needs and the interventions required to address these, including referral to the Reporter.

Practical advice about making a referral to the Reporter can be found within national multiagency guidance produced by Children's Hearings Improvement Partnership entitled "Guidance on Referral to the Reporter – Information for Partners."

www.scra.gov.uk/wp-content/uploads/2016/03/Guidance-on-Referral-to-Reporter.pdf

This guidance provides useful information such as considerations to take into account as a potential referrer and information to provide in a referral to help the Reporter decide whether or not to arrange a children's hearing.

Reporters are always happy to discuss a child's case where this will help clarify considerations in making a decision on whether or not to refer. The Reporter for Aberdeenshire can be contacted on 0131 244 8720.

A standard Social Work referral to Reporter form has been produced by Aberdeenshire Council in conjunction with the Reporter to assist with the referral process and the provision of the information the Reporter requires.

Criteria for Referral to a Children's Hearing

Before a children's hearing can be arranged, the Reporter needs to be satisfied that

- (a) There is sufficient evidence of one or more of the statutory grounds for referral applying to the child AND
- (b) It is necessary for a compulsory supervision order to be made in respect of the child.

The statutory grounds for referral are contained within section 67(2) of the Children's Hearings (Scotland) Act 2011 and in the context of neglect, the most relevant are

- (i) In terms of section 67 (2) (a), the child is likely to suffer unnecessarily or be caused serious injury to health or development due to lack of parental care and
- (ii) The child has been the victim of an offence mentioned in schedule 1 to the Criminal Procedure (Scotland) Act 1995. One such offence is an offence under section 12(1) of the Children and Young Persons (Scotland) Act 1937. i.e. a child / young person under the age of 16 being wilfully neglected in a manner likely to cause unnecessary suffering or injury to health by an individual aged 16 and over with parental responsibilities in relation to the child or having charge care or control over the child/ young person. Examples of neglect are provided for in the legislation including failure to provide adequate food, clothing, medical aid, lodging.

This ground does not require an individual to have been charged or convicted of the offence. Indeed there may be insufficient evidence to support criminal proceedings but sufficient to prove this ground in relation to the child. This is due to the standard of proof being of a standard lesser than that applicable in criminal proceedings and differences in rules of evidence.

In assessing the need for compulsion, the Reporter will have regard to the following considerations

- The extent of concern for the welfare of the child. Using the My World Triangle tool, the Reporter will analyse the available information (information provided with the referral or gleaned through subsequent investigation) and consider the strengths and weaknesses of the child's health and development, parenting and family and environmental factors.
- The history of cooperation with previous interventions by agencies and the impact of the same

- Motivation / ability to effect change and willingness to engage with supports to address the child's needs.

In addition to including the views of the child and family, information to the Reporter should include an assessment of risk and need, evidence to support a ground for referral and an evidenced recommendation as to the need for a compulsory supervision order. It should also include an update chronology, as this aids assessment of evidence and helps provide a clear picture of the child's life, transitions and professional interventions

There is no appeal against the decision of the Reporter on whether or not to arrange a children's hearing.

There is a local protocol in Aberdeenshire for the management of differences in situations where the decision of the Reporter not to arrange a children's hearing is contrary to the recommendation of the Local Authority. The aim of this is to allow for any gaps in information to be addressed before decision making, decisions to be explained and to provide an opportunity for increased understanding and learning in relation to the thresholds for intervention and is attached as appendix 1.

Children's Hearings

The children's hearing can only consider the case where the grounds for referral are understood and accepted by the child and all relevant persons. Where the child is too young to understand the grounds or these are disputed, the children's hearing may direct the Reporter to apply to the Sheriff to decide whether any grounds are established. If the Sheriff so decides, then he will ask the Reporter to arrange a children's hearing to dispose of the case.

What the children's hearing must decide is whether to make a compulsory supervision order in respect of the child. The children's hearing can only make such an order where it is necessary for the child's protection, guidance, treatment or control,

In making a compulsory supervision order, the children's hearing can include any of the measures specified in section 83(2) of the Children's Hearings (Scotland) Act 2011. For example the hearing can state where a child should live and with whom it can also attach duties on the Local Authority to provide supports to the child.

In making a decision, the children's hearing must have regard to the need to promote and safeguard the child's welfare throughout the childhood, the views of the child and must only make an order where it is better for the child an order is in place than no order.

There are also provisions which allow children's hearing in certain circumstances to make an interim order.

Emergency Legal Measures

The Local Authority may need to take an emergency response in order to protect children who are subject to neglect. Part 5 of the Children's Hearings Scotland Act 2011 allows the Local Authority to apply to the Court for orders to require emergency intervention. There are two orders available for this.

The Child Assessment Order: Sheriff may make the order if satisfied that (a) the Local Authority has reasonable cause to suspect (i) that the child has been or is being treated in such a way that the child is suffering or is likely to suffer significant harm, or

(ii) That the child has been or is being neglected and as a result of the neglect the child is suffering or is likely to suffer significant harm. S 36 (2) (a) of the Children's Hearings (Scotland Act 2011).

The Child Assessment Order only lasts for 3 days and does not automatically result in a referral to the Reporter - although this referral could be made separately.

Child Protection Order: Sheriff may make the order if satisfied that (a) the Local Authority has reasonable grounds to suspect (i) that the child has been or is being treated in such a way that the child is suffering or is likely to suffer significant harm, or

(ii) that the child has been or is being neglected and as a result of the neglect the child is suffering or is likely to suffer significant harm, or

(iii) The child will be treated or neglected in such a way that is likely to cause significant harm to the child. S 38 (2) (a)

The test for these orders is SIGNIFICANT HARM. It is a high test to meet and it is for the local authority to determine whether to make the application.

If a Child Protection Order is granted there is a legal process which follows on – a referral is made to the Reporter and a Children's Hearing has to sit and consider the case and whether to continue the order and make any changes to it by the 2ND working day following implementation of the order.

Other Emergency Powers

There are other emergency response which can be made if the situation requires it.

An order from a Justice of the Peace might be used when it is impossible to contact a sheriff, to obtain a child protection order. (section 55 of the 2011 Act.) It lasts for a maximum of 24 hours. The reporter must be notified of the order as soon as practicable after it is granted. This is treated as a referral to the reporter. The reporter has the power to terminate the order in certain circumstances.

Emergency Police Powers

In an emergency situation, where a police officer has reasonable cause to believe that the conditions for making a child protection order are satisfied and it is not practical in the circumstances to make an application to the Sheriff/Justice of Peace, then the officer may remove the child to a place of safety. Section 56 Children's Hearings (Scotland) Act 2011 The necessity to remove the child must be immediate otherwise a child protection must be applied for. The power only lasts for 24 hours thereafter the Police / Local Authority needs to apply to the Sheriff for a child protection order. The police must inform the Reporter as soon as practicable and the Reporter must treat this a referral.

A child can request short term refuge and this may be provided by a local authority or by a person who provides a care home service. This refuge lasts up to 7 days or in exceptional circumstances 14 days. The Reporter does not have to be informed nor is there a requirement to refer the child to the Reporter. However, the Local Authority may decide to make a referral and if the child is subject to a compulsory supervision order which requires variation, the Local Authority is under a duty to request a review hearing. Section 38(1) of the Children's (Scotland) Act 1995.

**PROTOCOL FOR SITUATIONS WHEN REPORTER DECISION ON REFERRAL
DIFFERS FROM LOCAL AUTHORITY RECOMMENDATION**

**BETWEEN
SCRA GRAMPIAN LOCALITY
AND ABERDEENSHIRE COUNCIL**

Key Principles

1. SCRA is independent of the local authority and Reporters are independent decision-makers entitled to make a decision on a referral that differs from the recommendation of the local authority.
2. Timeous decision-making on referrals is important and nothing about this protocol should lead to unnecessary delay in decision-making.
3. Where the Reporter's decision differs from the recommendation of the local authority there may be a number of different reasons for that and it is important that the reasons are effectively communicated.
4. In many cases, where the Reporter's decision differs from the recommendation of the local authority, there is an opportunity for learning or increased understanding. That can and should take place by good direct communication between the case social worker and the Reporter.
5. In rare cases it will be appropriate to escalate such cases for a further review.
6. The learning that arises from the operation of this protocol and from such reviews should be disseminated and embedded into practice. The learning shall be identified and incorporated into learning events 3 times per year.

Actions Prior to Reporter Making the Decision

7. Where the Reporter initiates an investigation into a child that has previously been referred and the local authority are re-referring the child, the Reporter shall highlight any gaps or missing information from the previous assessment to allow the local authority to focus the provision of information and address the gaps where possible.
8. When the Reporter is considering a final decision that differs from the recommendation of the local authority, the Reporter shall make reasonable efforts to contact the case social worker / report writer or their manager to advise of the decision and reasons prior to making the final decision. However, the Reporter is not to unnecessarily delay making a decision when the social worker is not available.
9. Where the decision is not to refer the child to a hearing, in communicating the reasons for their decision to the local authority, the Reporter shall address whether there was lack of evidence for a ground or no case for compulsion.

Re-referral

10. It is open to the local authority to re-refer a child at any time. When the local authority are considering making a re-referral for a child where the decision has previously been not to refer to a hearing they should consider the previous gaps in information / evidence and address these so far as possible in making their new referral.

Procedure to Escalate for Review

11. Where, despite the communication referred to above at para. 7-9, there is no resolution between the local authority and the Reporter regarding the decision, the following is the procedure to escalate for review:-

- a) Cases should be escalated for review very rarely and only after going through the steps outlined in this protocol at 7-9.
- b) The case social worker should approach their Line Manager in the first instance and seek approval to escalate.
- c) Once the line manager agrees, notification should be given to the relevant social work manager.
- d) Where deemed appropriate, the relevant social work manager will notify the Locality Reporter Manager for a review to take place.
- e) The relevant social work manager and Locality Reporter Manager will review the information available and a discussion will take place between them about any learning points and actions identified.
- f) The learning points will be addressed with individual staff where appropriate and , where there is i wider learning, this will be addressed in accordance with para.6 of the protocol

Monitoring and Review

12. The operation of this protocol will be monitored and reviewed on a quarterly basis via the Aberdeenshire Panel Liaison Group.

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